

DECLARATION OF SERVICE

I, Robin Muschy, declare that on May 17, 2011, I served and filed copies of the attached Reply to CEC, dated May 17, 2011. The original document filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:
[http://www.energy.ca.gov/sitingcases/carlsbad/index.html].

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- ☒ sent electronically to all email addresses on the Proof of Service list;
- ☒ by personal delivery;
- ☒ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- ☒ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (**preferred method**);

OR

- ☐ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Robin Muschy



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION
FOR THE *CARLSBAD ENERGY
CENTER PROJECT***

**Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 1/24/2011)**

APPLICANT

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STATE OF CALIFORNIA

Energy Resources Conservation and
Development Commission

In the Matter of:)
Application for Certification for the)
Carlsbad Energy Center Project)
(CECP))
_____)

Docket No 07-AFC-6

May 17, 2011

City of Carlsbad and Carlsbad Redevelopment Agency
Reply to CEC Committee's Request in Preparation for Hearings on the Presiding Member's
Proposed Decision

In response to the Committee's request to facilitate preparation for the Evidentiary Hearing on
May 19, 2011, the City submits the following:

1. Witnesses the City intends to call:
 - a. Fire Water Connection – Joe Garuba
 - b. Fire Lessons Learned – Fire Chief Kevin Crawford, Joe Garuba
 - c. Seismic Safety Lessons Learned – No witnesses
 - d. Compliance with New Federal NO2 Standards – No witnesses
 - e. Extraordinary Public Benefit – Murray Kane, Debbie Fountain
2. Time estimates for direct and cross-examination:
 - a. Fire Water Connection – 5 minutes direct, 5 minutes cross
 - b. Fire Lessons Learned – 30 minutes direct, 30 minutes cross
 - c. Seismic Safety Lessons Learned – No direct, 5 minutes cross
 - d. Compliance with New Federal NO2 Standards – No direct, 5 minutes cross
 - e. Extraordinary Public Benefit – 30 minutes direct, 30 minutes cross
3. Electronic copies of any documents the City wishes to introduce into evidence:
 - a. Written Testimony of Fire Chief Kevin Crawford (to be submitted as soon as practicable)

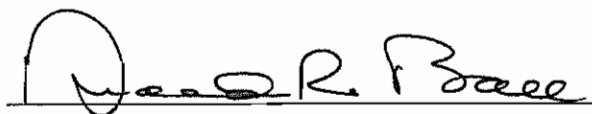
- b. Written Testimony of Joe Garuba (to be submitted as soon as practicable)
 - c. Letter from Ron Rouse and response from the City on the Coastal Rail Trail (Exhibit A)
 - d. Implementation Plan for Compliance with California Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling, dated March 2011.
(<http://www.waterboards.ca.gov/waterissues/programs/ocean/cwa316/powerplants/encina/docs/eps/iplan2011.pdf>)
 - e. City Map showing location of proposed Coastal Rail Trail (Exhibit B)
4. Proposed conditions of certification including excess conditions for obtaining permits from other agencies including permits from Air Pollution Control District, Environmental Protection Agency, California State Lands Commission, NPDES permits from RWQCB all prior to the commencement of construction.
 5. Proposed conditions that applicants pay all City fees and taxes including the Public Facility Fees (City Council Policy No. 17, Exhibit C) and additional license tax on new construction (Carlsbad Municipal Code Chapter 5.09, Exhibit D).

Due to the short time to prepare, the City reserves the right to submit other documents on these topics at the hearing.

Although the City will be commenting on the Presiding Member's Proposed Decision, the City has not had sufficient time to prepare those comments in the six working days available since the document was released. Consequently, the City will be presenting only a brief summary of some of its comments at the hearing and will be submitting the entirety of its comments no later than June 8, 2011.

The Carlsbad Mayor would like to make a brief opening comment at the hearing on May 19. He does have other obligations and needs to leave around 10:00 am and would appreciate an opportunity to speak early during the hearing.

Respectfully submitted:



Ronald R. Ball 5-17-2011
City Attorney for City of Carlsbad, and
General Counsel for Carlsbad Redevelopment Agency

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Item No. 14

FOR THE INFORMATION OF THE CITY COUNCIL	
3/7/11	RD
DATE	CITY ATTORNEY

March 7, 2011

HAND-DELIVERED

Mayor Hall and City Council Members
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

**Re: City Council/Redevelopment Commission Agenda March 8, 2011 Item #14
(Agenda Bill #20,478)**

NRG Energy, Inc. and Cabrillo Power I LLC Objections to Approval of Agua Hedionda Sewer Lift Station and Sewer/Water Pipelines/Facilities

Dear Mayor Hall and Council Members/Commissioners:

We are special counsel to NRG Energy, Inc. and Cabrillo Power I LLC (collectively "NRG") and submit the following objections on their behalf to the City's proposed approval of the multiple Agua Hedionda Sewer Lift Station and associated Sewer/Water pipelines and facilities identified in the above referenced Agenda Bill #20,478 (collectively the "Project"). Cabrillo Power I LLC is the owner/operator of the existing Encina Power Station ("EPS") and NRG Energy, Inc., its parent company, is processing the Carlsbad Energy Center Project ("CECP") Application for Certification before the California Energy Commission ("Energy Commission") on a portion of the EPS site between the railroad tracks and Interstate 5.

The original and ten copies of this letter are being filed directly with the City Clerk; we ask that the original be incorporated into the administrative record and the copies be timely distributed to all Council Members/Commissioners, City Attorney and City Manager. A courtesy copy has been emailed directly to the City Attorney.

A. Overview.

The CECP is a modern, environmentally beneficial and efficient natural gas fired combined cycle electrical generating facility that will result in the permanent shut down/replacement of three of the five existing, older EPS generating units realizing reduction of ocean water for "once through" cooling purposes and significant reductions in air pollutants/greenhouse gas emissions compared to existing EPS electrical generation. The CECP is fully consistent with the long

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standing goal of the City, and NRG, for eventual retirement of the older EPS facilities west of the railroad tracks and replacement with a physically smaller, more efficient and cleaner generating facility between the railroad tracks and Interstate 5. The CECP is fully consistent with and implements the State Water Resources Control Board's 316(b) Policy to phase out use of once through ocean water cooling for electrical generation in favor of a closed loop cooling alternative.

The City's Project facilities are proposed to be located on the EPS property and encroach into the CECP area, which property is under the exclusive jurisdiction of the Energy Commission as part of the CECP process. Notwithstanding the obvious CECP benefits, the City has been a zealous opponent/participant throughout the CECP process before the Energy Commission and related governmental agencies, reportedly having spent in excess of \$1.5 Million¹ in public funds to date to oppose the CECP, yet the City completely fails to evaluate its proposed Project's significant, adverse impacts and inconsistencies with the CECP and existing EPS operations. Further, the City's process to date and purported reliance on a mitigated negative declaration ("MND") is not consistent with the legal requirements of the California Environmental Quality Act ("CEQA"). It appears the City is proposing to proceed with its Project without regard to the CECP and other legitimate property owner rights as a continuation of the City's all out effort to block or otherwise interfere with the CECP. We hereby incorporate by reference the record of the CECP proceedings before the Energy Commission available at <http://www.energy.ca.gov/sitingcases/carlsbad/index.html> (in particular, the documents at <http://www.energy.ca.gov/sitingcases/carlsbad/documents/index.html>) as evidence of the City's familiarity with and active opposition to the CECP project.

B. City Failure to Provide Legally Adequate Notice to Landowner.

Under the City's own ordinances and State Planning and Zoning Law, as the landowner, NRG was to receive actual written notice of the Planning Commission hearings and proceedings at least ten (10) days prior to the February 2, 2011 Planning Commission hearings. (See Gov't Code Sec 65091 and Carlsbad Municipal Code Sec. 21.54). Further under CEQA, NRG should have received actual written notice of the City's intention to rely on a mitigated negative declaration and was to specifically include notification of the applicable comment period and details regarding the public hearings to consider the Project. (See CEQA guidelines Sec. 15072).

¹ See attached Agenda Bill #20,216 dated April 27, 2010 stating: "Since 2008, the City of Carlsbad has approved and funded through the City's General Fund \$1.5 million to pay for costs related to all legal and other related actions to respond to, and/or establish opposition to, the application submitted to the California Energy Commission by NRG for a new power plant ..."

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NRG believes the required notices were never provided in accordance with applicable law because under well established California case law, due process requires that notice must be "...reasonably calculated to afford affected persons the realistic opportunity to protect its interests." (See *Horn v. County of Ventura* (1979) 24 Cal.3d 605).

Clearly, the City has known of the impacts of its Projects on NRG for years as evidenced by the multi-year Energy Commission CECP process started in September, 2007, the week long Energy Commission Evidentiary Hearings February 1-4, 2010 in Carlsbad, and periodic meetings/discussions (most recently in January, 2010) regarding the design/location of the sewer lift station and single sewer pipeline replacement and potential incompatibility of these facilities with the CECP. Yet, the City failed to meaningfully notify NRG of the proposed MND or the subsequent Planning Commission hearings as required by law.

Given these circumstances, it is clear the City has failed to provide the legally required actual written notices to NRG of the entire Project, all the while its staff was engaged in extensive engineering, design and environmental evaluation of a range of facilities it knew would have further significant, adverse impacts on NRG ownership and operation of the EPS and CECP.

C. City's Project Design and Engineering Incompatibilities.

The City's Project includes the design of a new lagoon utilities bridge to accommodate the future extension of the Coastal Rail Trail along the east side of the railroad tracks through the EPS (see Planning Commission Staff Report at p.2), a location that is well known to the City as incompatible with the CECP and unacceptable to the Energy Commission Staff and NRG. NRG is prepared to accommodate the Coastal Rail Trail in a location that is "mutually acceptable" to both the City and NRG, but the proposed Coastal Rail Trail along the sewer support bridge continuing easterly of the railroad tracks is unacceptable for reasons that have been fully vetted through the Energy Commission proceedings.

Further, the scope of the Project as presented to the Planning Commission far exceeds anything previously discussed with NRG. The Project is not simply a sewer lift station replacement and sewer force main replacement, but includes several additional pipelines and facilities, including: (1) a new "utilities bridge" over the lagoon (Note: Cabrillo Power I LLC owns fee title to the lagoon and its dredging/maintenance is a vital part of the EPS operations); (2) leaving the old 42 inch sewer line in place south of the lift station as a "parallel" line to the new force main; (3) new 54 inch sewer line north and south of the lift station; (4) a new pressurized 12 inch recycled water line from Encina Wastewater Treatment Facility ("EWTF") through the EPS even while the City claims recycled water is not available for CECP; (5) a new 6 inch potable water line through EPS; (6) a possible relocation of SDG&E natural gas line; and (7) substantially widening the existing limited 17.5 foot wide easement to 30 feet wide to accommodate the additional facilities.

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The following list is intended to illustrate some of the unresolved issues regarding the ultimate design, engineering, construction timing, operational constraints and scope of the Project. Without definitive answers to these questions, the Project's actual environmental and EPS/CECP project impacts cannot be realistically evaluated. The Project, as proposed, lacks adequate details and specifics to support CEQA and Energy Commission CECP compatibility analysis.

1. Contrary to the details previously discussed with NRG, the Project is much more extensive, wider and involves multiple pipelines in the CECP area, representing much greater impacts to the CECP.
2. Proposed alignment of Coastal Rail Trail easterly of railroad tracks across the CECP area is not acceptable to NRG nor to Energy Commission Staff; the projected alignment is inconsistent with prior discussions/schematics prepared by City to avoid CECP/EPS operational interference.
3. City Project does not accommodate joint use of surface area for CECP heavy haul, surface access and ongoing power plant operations during CECP construction and subsequent operations of EPS/CECP.
4. City Project footprint conflicts with "construction lay down areas" long planned for CECP, new natural gas transmission line service extension to CECP and the existing and proposed storm water management facilities.
5. City has failed to indicate where its Project electrical power supply will be located and possible interference of Project electrical service with EPS/CECP construction/operation.
6. Project proposes significant new, additional pipelines in an existing "utility congested area", including the existing sewer line, SDG&E gas transmission line, overhead electrical lines, Poseidon desalination product water lines, railroad right of way and SDG&E substation facilities.
7. Project design fails to identify construction lay down areas for lift station/pipelines and access routes, both temporary (during construction) and permanent.
8. Project construction scheduling is unclear and potentially will interfere with other construction projects, including CECP, Poseidon desalination and adjacent SDG&E electrical distribution facilities and easements.
9. No provision is made for the vacation of the current lift station/single sewer pipeline easement presently vested in Vista Sanitation District and City of Carlsbad.
10. City Project removes existing mature vegetation/trees visual impact mitigation for CECP/EPS.

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D. The Proposed MND is Inadequate, Incomplete and Insufficient to Comply with the Requirements of CEQA.

1. EIR Required. The City's reliance on a mitigated negative declaration for CEQA compliance is unsupportable. CEQA requires preparation of an environmental impact report ("EIR") whenever there is a "fair argument" that a project may have a significant unmitigated effect on the environment. (CEQA Guideline, § 15064(f)(1).) As set forth below, there is a "fair argument" that the Project will have significant environmental impacts. Even if that were not the case, the MND is inadequate in that it fails to fully analyze all of the Project's potentially significant environmental impacts and also relies on mitigation measures that will not avoid the identified significant environmental impacts. Therefore, there is a reasonable probability that implementation of this Project will have significant unmitigable adverse impacts on the environment. An EIR must be prepared to more fully analyze and disclose the Project's environmental impacts.

2. Project Description/Project Splitting. The Coastal Rail Trail alignment needs to be analyzed as part of the project description in an EIR. CEQA defines a "project" to include the "whole of an action" that may result in a direct or reasonably foreseeable indirect impact on the environment. (CEQA Guidelines, § 15378(a); *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139 [CEQA review required before agency, as a practical matter, may commit itself to any feature of a project].) The City is careful not to call the Coastal Rail Trail alignment part of the "Project" saying that the Project will only *accommodate* "a future pedestrian trail." However, the City has made clear through its participation in Energy Commission and related proceedings that it intends to locate the Coastal Rail Trail east of the railroad tracks, even though the Energy Commission Staff determined that such location is inappropriate and potentially hazardous to the public safety. Nevertheless, the City notes that constructing the Coastal Rail Trail as part of this Project will implement the South Carlsbad Coastal Redevelopment Plan ("SCCRP") goal of "developing new beach and coastal recreational opportunities." (Staff Report, pp. 2, 8-9.) Under the circumstances, it is reasonably foreseeable that with approval of this Project, the City will seek to make this the east side of the tracks the actual location of the rail trail. Therefore, the failure to analyze the Coastal Rail Trail as an element of the Project constitutes "project splitting" in violation of CEQA. An EIR needs to be prepared that analyzes, among other things, the environmental impacts of having the public pass upon the trail route (e.g., trampling on nearby sensitive vegetation, littering into the lagoon, safety risks associated with people passing nearby the power plant, etc...).

The MND also notes that "overhead electrical distribution facilities will be relocated as needed" as part of the Project. (MND, p. 17.) Yet, there is no analysis of which overhead facilities might be relocated, where or how these facilities might be relocated or the environmental impacts associated with that possible relocation. Lastly, the MND states that the sewer support bridge

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will not require any work to occur within the 100-year flood elevation. The bridge construction methodology, however, is not described and there is no other evidence supporting the City's claim that a bridge can be constructed over the lagoon without impacting sensitive lagoon resources. Similarly, the MND does not describe how the existing bridge can be removed without impacting the lagoon environment itself. All of these issues need to be further described and analyzed in an EIR.

3. Environmental Setting—Surrounding Land Uses. The MND does not adequately describe the surrounding land uses, in particular the Project's proximity to the EPS and the potential conflicts between the construction and operation of the Project, operation of the EPS and proposed construction and operation of the CECP. For example, the MND acknowledges that substantial grading/construction activities will occur on property owned by Cabrillo Power I LLC in connection with the sewer lift station, but there is no discussion of how to coordinate that construction with CECP construction, the risks of having Costal Rail Trail users in close proximity to EPS/CECP facilities, how the Project may impact NRG's use of the Project site as a heavy haul road, the risk of foundation failures created by placing new pipelines adjacent to existing electrical buildings and related construction injury risks. The MND does not fully disclose that substantially expanded easements will be required over EPS/CECP Property. (See also, Section C. above for more details regarding the design/construction incompatibilities.)

4. Aesthetics. MND fails to substantiate how removal of 12 mature eucalyptus trees for the new lift station will have a less than significant impact on views and no mitigation measures are identified to replace the mature trees. With no analysis of this issue, there certainly is a fair argument that removing these trees will have a substantial impact on aesthetics.

5. Air Quality. There are substantial problems with the Project's air quality analysis, including:

- Export. The MND discloses that 77,000 cubic yards of soil/gravel will be graded or trenched and 31,000 cubic yards will be exported to an "acceptable offsite location", assumed to be 30 miles away. The MND fails, however, to substantiate these assumptions which are key to the MND's conclusions. A revised CEQA document must be prepared identifying where the export likely is to be taken and the associated traffic/pollution impacts of the export hauling. The MND also fails to analyze the export soil's condition and discuss measures that will be implemented to ensure the export will be free of any hazardous materials. In the absence of these details, a fair argument exists that the Project will have significant air quality and perhaps hazardous materials impacts.
- Ozone. The San Diego Air Basin is in a Federal and State non-attainment area for the 8-hour ozone (O3) standard, yet there is no analysis of the City Project's

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ozone contributions and impacts. (MND, pp. 35, 37.) One of the key precursors to the formation of ozone is NOx. As shown on Table 2 of the MND, the City Project will exceed the San Diego County APCD's threshold emission limit of significance for CEQA analysis of 250 pounds/day of NOx emissions (Project related construction emission of NOx are shown as 254.46 pounds/day and Table 2 of the MND notes this is a significant impact). As the San Diego Air Basin is in Federal and State non-attainment zones for the 8-hour ozone standard, and as NOx is one of the precursors for ozone, the Project will have a significant impact related to ozone generation. Additionally, the Project's emission of NOx and ROG all contribute to ozone formation in an ozone non-attainment area (the U.S. Environmental Protection Agency and California Air Resources Board define NOx and ROG as ozone precursors). An EIR disclosing and analyzing these ozone related impacts needs to be prepared before the Project can be approved.

The MND's analysis of cumulative ozone impacts is also flawed. The MND concludes the Project will not have a significant cumulative impact because the Project has only a "marginal temporary increase in NOx... air quality would be essentially the same whether or not the proposed project is implemented." CEQA does not permit unsubstantiated reliance on such a "de minimus" finding. Instead, a new CEQA document must be prepared that includes an actual and specific analysis of cumulative air quality impacts. Further, the MND fails to provide substantive facts to substantiate its "de minimus" conclusion.

Mitigation Measure AQ-1. The MND states incorrectly that the Project's significant emission of NOx can be mitigated with the inclusion of Mitigation Measure AQ-1. This mitigation measure requires observance of manufacturer's specifications for the proper maintenance of construction equipment and reduction in idling time. The MND fails to recognize that compliance with these practices is already assumed in the APCD's determination of emissions for construction activities. However, observance of construction equipment specifications is standard practice and are not capable of reducing the Project's NOx emissions below the APCD's significance threshold resulting in cumulative contribution to the continuing unmitigated exceedance of Federal and State 8-hour ozone standards. Accordingly, implementation of Mitigation Measure AQ-1 cannot be relied upon to reduce the emissions of NOx to less than significance.

- Sensitive Receptors. The MND analysis fails to acknowledge that the adjacent YMCA aquatic recreation area and Coastal Rail Trail may place sensitive receptors in close proximity to the Project (MND, pp. 37-38.) In the absence of

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this analysis, a fair argument exists that approval of the Project would have an adverse impact on the environment.

- Odors. Air scrubbers and carbon filters are relied upon to control odors. Maintenance of these features should be required as a mitigation measure and included in the MMRP. (MND, p. 38.) Further, there is no evidence demonstrating that air scrubbers and carbon filters will effectively control noxious odors created by the Project.

6. Cultural Resources. Mitigation CUL-1 states “if significant resources are encountered, appropriate mitigation measures must be developed and implemented.” This unlawfully defers development of adequate mitigation measures, which is particularly troubling here because at least two archeological sites are known to exist near the Project site. (MND, p. 51.) In the absence of adequate mitigation measures, approval of the Project does not avoid significant environmental impacts and therefore an MND is inappropriate.

7. Geology.

- The MND fails to analyze the potential adverse impacts to the adjacent planned uses, such as the CECP. In particular, there should be an analysis of the depth and strength of the pipeline construction and measures ensuring that construction and operation of pipelines will interfere with planned surface heavy haul and EPS/CECP operations.
- The MND fails to analyze the potential adverse impacts to the existing facilities. For example, the Project proposes to construct new pipelines adjacent to existing electrical buildings, which presents a potential risk of foundation failures. The safety risk of installing pipelines adjacent to and crossing under the existing high voltage wires should also be analyzed.

8. Greenhouse Gasses. The threshold of significance relied on in the MND is vague as it does not indicate what level of emissions might result in a direct or indirect significant impact. The analysis also fails to “make a good faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse emissions resulting from [the] project” as required by CEQA Guidelines section 150644(a). The City did not even attempt to engage in the qualitative or quantitative analysis required by the CEQA Guidelines. Instead, the MND concludes simply that emissions will be relatively minor and incrementally insignificant. CEQA does not permit the City to conclude that the Project will not have a significant environmental impact simply because its contribution will be “small” or “de minimus”. (*Communities for a Better Env’t v. California Resources Agency* (2002) 103 Cal.App.4th 98, 126.) The MND provides no evidence, let alone substantial evidence, to

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demonstrate that the Project will not have a significant impact on greenhouse gas emissions. As such, it fails to meet the requirements of CEQA. The critically important issue of greenhouse gas emissions needs to be fully analyzed in an EIR.

9. Hazards.

- The MND fails to analyze the impacts resulting from a potential failure/collapse of the new single span bridge carrying sewer and other utility lines over the lagoon or the impacts of potential lift station/pipeline leaks.
- The MND fails to analyze the potential adverse impacts to the existing facilities, such as the safety risk of installing pipelines adjacent to and crossing the existing high voltage wires or having pedestrians along the Coastal Rail Trail in close proximity to the EPS/CECP.

10. Hydrology/Water Quality. The MND fails to identify measures that will be implemented to reduce or eliminate the possibility of a sewer spill into the adjacent wetlands or lagoon. Instead, the MND defers development of such measures until the construction phase. (MND, p. 66.) It is reasonably foreseeable that replacement of the existing sewer line could result in a spill which would damage sensitive environmental resources. As such, development of mitigation measures to prevent such a spill, and to prevent damage in the event of a spill, needs to be developed and publicly vetted as part of an EIR for the Project.

11. Recreation. There is no analysis of the physical impacts associated with having people use the coastal rail trail (see above) and bringing public recreation users within the perimeter of the power plant and lagoon. As discussed above, such an analysis is required under CEQA.

12. Cumulative Impacts. The cumulative impact analysis is conclusory and wholly inadequate. The MND identifies a list of cumulative projects and then concludes its analysis by stating:

"It would be expected however, that environmental impacts associated with these development projects, plus the massive sewer CIP, could be mitigated to level that would be less than significant by means of mitigation measures similar in content to those identified in this Environmental Initial Study."

There is no specific analysis of any cumulative impacts nor evidence in the record that supports this conclusion in the MND. In particular, the MND fails with respect to the following:

- Aesthetics: There is no analysis of I-5 widening on aesthetics. The MND acknowledges that the bridge and lift station will be observable from I-5, but from

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a distance of 1,600 feet away will not significantly contribute to a coastal view obstruction. The MND does not contain any substantive analysis of cumulative impacts on aesthetics from removal of the 12 trees and fails to take into account the proposed CECP project altogether.

- Air Quality. As discussed above, there is no specific cumulative air quality analysis considering cumulative ozone and other pollutant impacts, I-5 widening, and the CECP project.
- Greenhouse Gas Emissions. The MND fails to even attempt a cumulative greenhouse gas emissions analysis because emissions are not analyzed in the relevant general plans. CEQA requires the City to perform a good faith analysis of the cumulative impacts.
- Recreation. The MND fails to analyze the cumulative impact associated with other segments of the rail trail.
- CECP Power Plant Project. The MND acknowledges that "other [cumulative] impacts could result from the NRG Power Plant expansion project inasmuch as that project has not yet been specifically defined." Indeed, the CECP project has been specifically defined and a comprehensive environmental analysis that complies with CEQA has been performed by the California Energy Commission as required by the Warren-Alquist Act. This environmental analysis is set forth in the Energy Commission Preliminary and Final Staff Assessment which the City has actively and aggressively challenged. (See MND, p. 98). Therefore, it is disingenuous and factually inaccurate for the City to say that the NRG Power Plant project has "not been specifically defined." The September, 2007 filing of the CECP Application for Certification makes the CECP a "reasonably foreseeable" project and requires the City to treat the CECP as a reasonably foreseeable project for purposes of analyzing cumulative impacts as part of the CEQA analysis. (See also Section B. above for the City's full awareness of all CECP details as evidenced by the City's involvement in the Energy Commission multi-year certification process.)

As detailed above, the MND fails to comply with CEQA as it does not provide an adequate analysis of the Project's significant environmental impact and does not adequately mitigate the Project's significant environmental impacts. Moreover, an EIR, rather than a MND, must be prepared and certified before the Project can be approved by the City because there is a fair argument that the Project will have significant adverse environmental impacts.

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Mayor Hall and City Council Members

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E. Conclusion.

For all the reasons set forth above, the City's adoption of the Project is not legally supportable. The MND is inadequate under CEQA, and in fact, a full EIR is required to fairly analyze the significant environmental impacts of the Project, particularly when a realistic evaluation of adjacent "reasonably foreseeable" projects, including CECP, is included.

The proposed City Project is far more extensive than the Sewer Lift Station/Force Main replacement previously discussed. The easement widening and additional pipeline/facilities directly and adversely affect the EPS/CECP. Notwithstanding the multi-year Energy Commission proceedings, the City failed to give meaningful, timely notice of the full scope of its Project to the landowner most directly impacted.

Respectfully, NRG objects to certification of the MND and approval of the Project as presented until the significant outstanding issues are fully addressed and legally resolved.

Very truly yours,



Ronald W. Rouse

of

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

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CITY OF
CARLSBAD

Planning Division

www.carlsbadca.gov

April 12, 2011

LUCE FORWARD

Attn: Ronald W. Rouse

600 West Broadway, Suite 2600

San Diego, CA 92101

RE: RESPONSE TO COMMENTS IN A LETTER DATED MARCH 7, 2011 REGARDING CITY COUNCIL AGENDA BILL NO. 20,470

Dear Mr. Rouse:

This response letter was written to address your comments to the Carlsbad City Council in a letter dated March 7, 2011. The following are a summary of the substantive points made in your letter and the city's responses.

A. Overview

Comment: *The city scope of the project is much greater than previously discussed with NRG and the city fails to evaluate its proposed Project's significant, adverse impacts and inconsistencies with the Carlsbad Energy Center Project ("CECP") and existing Encina Power Center ("EPS") operations.*

Response: The city has a complete record of contacts and discussions with NRG representatives regarding the scope of the project. As requested by the City Council at its March 8, 2011 meeting, this record will be attached to the agenda bill for the April 26, 2011 meeting. Numerous meetings and site visits have been held since 2006 between City of Carlsbad staff and NRG staff. Drawings of the proposed project and its limits have been provided to NRG staff. The city received very little in the way of constructive comments on the plans from NRG staff throughout this period. To the extent that the city did receive constructive comments on the plans from NRG staff, modifications to the project were made. Frequent turnover of NRG staff assigned to the project contributed to a general lack of coherent communication and recommendations for substantive solutions from NRG staff.

The project description in the Mitigated Negative Declaration (MND) is accurate and sufficient for meaningful environmental impact analysis because it includes a clear and thorough explanation of the project, it includes maps depicting the project's location, it includes a statement of the objectives of the project, a description of the project's technical design characteristics, and the environmental setting, the construction methodology and phasing, and a list of the potential environmental impacts. As explained below, the MND adequately analyzes the project's potential environmental impacts and considers its effects on existing EPS operations. Please be advised however, that in an effort to even further clarify and detail the information, staff will recommend to the City Council at its April 26, 2011 meeting that it direct staff to conduct further analysis in regard to the proposed cumulative impacts including the CECP project and if warranted, to revise and recirculate the MND document per CEQA Guidelines § 15073.5(a).

B. City Provided Legally Adequate Notice to Landowner

Comment: *The City failed to provide legally adequate notice to the landowner of the noticing of the Mitigated Negative Declaration ("MND") and the Planning Commission hearing.*



Response: The city complied with CEQA Guidelines § 15072 by providing the notice of intent to adopt the MND to allow the public, responsible agencies, trustee agencies, and the county clerk, sufficient time to review the document prior to its consideration by the city's Planning Commission. The public and agencies were allowed the 30-day review period required under CEQA Guidelines § 15105. The following record provides information on the parties that received a copy of the notice of intent and the 30-day review period for each action.

Mitigated Negative Declaration Noticing. The city issued a Notice of Intent to Adopt a MND with a 30-day public review period as follows:

- Published in the North County Times on August 17, 2010 (Attached) (August 17, 2010 – September 16, 2010).
- Mailed to the San Diego County Clerk (August 16, 2010 – September 21, 2010).
- Mailed to the State Clearinghouse (SCH #: 2010081053- August 17, 2010 - September 15, 2010).
- Provided a hard copy at the Planning Department counter located at 1635 Faraday Avenue, Carlsbad.
- Posted on the city's website (August 17, 2010 – September 16, 2010).

Furthermore, the city provided a notification by e-mail to all persons who subscribed to receive a specific notification at the time that an environmental document was available for review. The subscriber could download a copy of the environmental document from a link provided within the e-mail. One subscriber to this service is Tim Hemig, an NRG Energy employee, who has been working with city engineering staff on the proposed sewer lift station project. The city's records show that Mr. Hemig received the e-mail notification on August 13, 2010.

Project Noticing. On August 17, 2010 the city posted three, 2-foot by 3-foot, yellow, Notice of Project Application signs with black lettering at three different locations along the 2.35 mile project to inform the public of a pending application for the project and to provide staff contact information (i.e. names, phone numbers, e-mail addresses, etc.). At this date, these three noticing signs are still posted at the following locations:

- Posted on a chain-link fence at the western end of Chiquapin Avenue at the northern end of the project.
- Posted on a chain-link fence at the entrance to SDG&E's storage yard at the northern end of Avenida Encinas off Cannon Road.
- Posted in front of Encina Wastewater Pollution Control Facility (EWPCF) at the southern end of the project on Avenida Encinas.

Planning Commission Meeting Noticing. The city provided the Planning Commission public hearing notice pursuant to Carlsbad Municipal Code §21.54 as follows:

- Mailed to the San Diego County Clerk of the Board of Supervisors on December 22, 2010.
- Published in the North County Times on January 21, 2011 (Attached).
- Posted to the city's website.
- Posted outside the city council chambers, located at 1200 Carlsbad Village Drive.
- Posted outside the city office, located at 1635 Faraday Avenue.
- Mailed to owners of property as shown on the latest equalized assessment roll within 600 feet, and occupants within 100 feet, of the 2.35 mile long project boundary.

Furthermore, the city provided notification by e-mail that is sent out to all persons who subscribed to receive the Planning Commission public hearing agendas. The subscriber could download the Planning Commission agenda from a link provided within the e-mail. Two subscribers to this service

are Tim Hemig and Keith Richards, both NRG Energy employees. Mr. Richards subsequently discontinued the e-mail service on February 24, 2011. The city's records show that Mr. Hemig and Mr. Richards received an e-mail notification on January 20, 2011 for the February 2, 2011 Planning Commission meeting.

NRG Energy employees George Piantka and Michael Pearson attended the February 2, 2011 Planning Commission meeting and informed Terry Smith, city engineering staff, that NRG did not receive a public notice in the mail for the meeting. Staff immediately conducted research as to why NRG was not notified. The city creates mailing labels for owners within the required 600-foot radius, with the owner name and owner mailing address as provided to the city by SanGIS, the city's consultant, which provides the most recent information from the County Tax Assessor's office. Staff learned that the County Tax Assessor's records identified Cabrillo Power I LLC as the owner of several parcels within the project boundary, however, the parcel information did not contain a mailing address for the company which is why it did not receive notice along with the approximately 750 other property owners who did receive the mailing notice. Staff also learned that the absence of an address is apparently the case for all entities that are exempt from paying County of San Diego property taxes.

Also, in a direct response to your oral comments at the City Council hearing on May 8, 2011, the City Council resolved to keep the public hearing open in order to address any new information that may be brought to their attention by NRG Energy between that date and the continued hearing date of April 26, 2011.

As explained above, the property owner was provided with legally required notice of the CEQA documents pursuant to CEQA Guideline §15072, and notice of the public hearing in accordance with Carlsbad Municipal Code § 21.54.060. NRG representatives also had actual notice as evidenced by the special e-mailings and their attendance at the Planning Commission hearing.

C. Scope of City's Project Design and Engineering

Comment: *An EIR should be processed for CEQA compliance rather than a Mitigated Negative Declaration ("MND") because the project is greater in scale than that previously discussed with NRG Staff. The project will include a new lagoon utilities bridge to accommodate the future extension of the Coastal Rail Trail ("CRT") along the east side of the railroad tracks, will relocate overhead electrical distribution facilities, recycled and potable water lines, widening the existing easement, and will have much greater impacts to the CECP than discussed in the MND.*

Response: Pursuant to CEQA Statutes § 21064.5 and CEQA Guidelines § 15064(f)(2), a MND may be prepared when all potentially significant impacts from a project can be mitigated to a level of insignificance as a result of revisions made to the project or agreed to by the applicant before the MND and Initial Study were released to the public. The record shows that this is the case for this project. As a result of the revisions agreed to by the city, the project avoids or mitigates all significant adverse impacts on the environment. As such, in light of the whole record to date, no fair argument exists that the project, as designed, could have a significant effect on the environment.

The CRT is not a part of this project. Page 2 of the February 2, 2011, Planning Commission staff report clarifies that, "The proposed sewer support bridge would also provide the lagoon crossing for the Coastal Rail Trail, a separate, future project in this area." However, the proposed project has "independent utility" from the CRT, inasmuch as it does not rely in any way on any aspect of the CRT project. And the CRT is not an integral part, nor will it rely on or change the scope or nature of the proposed sewer project in any way. Neither the staff report nor the MND state that the CRT will be located along the east side of the railroad tracks. Nowhere in the MND, the staff report, nor in staff's presentations (February 2, 2011 at the Planning Commission meeting and March 8, 2011 at

the joint City Council and Housing and Redevelopment Commission meeting) has the alignment of the CRT through the Encinas Power Station ("EPS") been mentioned since it is unknown and speculative at this time.

Furthermore, the bridge portion of the sewer project has simply been designed in a manner in which it could accommodate the CRT. The CRT could be designed on either the east or west side of the railroad tracks, if and when the project is funded and an alignment determined. However, very preliminary design investigation concludes that the CRT could be more feasible if the trail was located on the east side of the railroad tracks within the sewer pipeline easement. As mentioned however, the alignment has not been determined at this time.

Your letter alleges that the scope of the project as presented to the Planning Commission far exceeds anything previously discussed with NRG. However, as stated previously, city engineering staff has been working with NRG personnel since 2006 to site the proposed sewer lift station in a location that would minimize impacts to the power plant property. As requested by NRG staff, the new lift station was sited at the most northerly end of the NRG property. A detailed site plan was developed by city staff and presented to Tim Hemig of NRG in a letter dated September 5, 2008. The site plan has not substantially changed in size since this layout was prepared. Additionally, the city initially requested an additional 20-foot wide easement for the proposed 30-inch diameter sewer force main. As the design of the city's project has progressed, city staff agreed to reduce the size of the additional easement from 20-feet wide to 12.5-feet wide in order to minimize potential impacts to the power plant property.

With regard to the overhead electrical lines, the relocation of an existing single line to the present sewer lift station is an insignificant aspect of the project construction and no adverse impacts have been identified relative to this line relocation. Per CEQA Guidelines § 15151, the standard of investigation requires only that *"a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences"* be provided. Further, per CEQA Guidelines § 15151, *"An evaluation of the environmental effects of a proposed project need not be exhaustive..."* This section goes on to state; *"The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure."* A detailed discussion of the overhead electrical line relocation during construction is not required by CEQA and that the city has made a good faith effort to analyze the significant aspects of the project.

Page 4 of your letter lists ten "unresolved issues" regarding the project and its compatibility with the CECP project. The cumulative impact section of the MND (pp. 98-100) does analyze the impact from the proposed project upon the "NRG Power Plant Expansion". This analysis concludes that three environmental issues could occur from the cumulative environmental consequences of the taking of these projects, plus other identified local and CIP projects together, but that these impacts would be expected to be mitigated by mitigation measures in line with those proposed for adoption in this MND if the power plant expansion is ultimately approved. However, in an effort to more thoroughly document the project's cumulative impacts including the CECP project, staff will recommend to the City Council at its April 26, 2011 meeting that it direct staff to conduct further cumulative impacts analysis and if warranted, to revise and recirculate the MND document per CEQA Guidelines § 15073.5(a).

D. The Proposed MND is Adequate, Complete and Sufficient to Comply with the Requirements of CEQA

D.1. EIR Required

Comment: *An EIR must be prepared to more fully analyze and disclose the Project's environmental impacts.*

Response: CEQA Guidelines §15369.5 states "*Mitigated negative declaration: means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.*" The proposed project complies with this characterization. The MND properly discloses, analyzes, and avoids or mitigates all significant environmental effects of the project.

D.2. Project Description/Project Splitting

Comment: *The failure to analyze the Coastal Rail Trail as an element of the Project constitutes "project splitting" in violation of CEQA.*

Response: As stated previously, the CRT is not a part of this project and the current project has independent utility from the proposed CRT segment. In an effort to accommodate potential future alternatives, the bridge portion of the project has simply been designed in a manner in which it could accommodate the CRT on either the east or west side of the railroad tracks if and when the project is funded and the alignment determined. As a result of the fact that the separate projects do not in any way rely on one another, the MND cannot be interpreted to be guilty of "project splitting".

Comment: *No analysis is provided as to which overhead facilities might be relocated, where or how these facilities might be relocated or the environmental impacts associated with that possible relocation.*

Response: As stated previously, CEQA Guidelines § 15151 requires only that "a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive..." In this case, no significant relocation of overhead facilities is anticipated. The single overhead line which must be relocated is a minor, incidental part of the project and a detailed discussion of the overhead electrical line relocation during construction is not required by CEQA. Thus, it is our conclusion that the city has made a good faith effort to analyze the significant aspects of the project.

Comment: *The bridge construction methodology is not described. No evidence is provided supporting the claim that a bridge can be constructed over the lagoon without impacting sensitive resources.*

Response: The MND indicates (on page 17) that the bridge will be constructed of "concrete vertical abutment supports and the setting of a weathered steel bridge" which will "completely span the entire channel" and that the "construction methodology will not require any work to occur within the 100-year floodplain." This construction methodology will involve the pouring of abutments on each side of the channel and the laying of the horizontal bridge structure between the abutments. Furthermore, the Mitigation Monitoring and Reporting Program (MMRP) for the project includes biological mitigation measures necessary to protect the adjacent open spaces. These mitigation measures include:

- BIO-3 - Placement of temporary orange construction fencing.
- BIO-4 - On-site biological monitor.
- BIO-7 - Training for all contractors and construction personnel.
- BIO-8 - Limiting construction activities and disposal sites.
- BIO-10 - Installing silt fencing to reduce silt run-off into the lagoon.

- BIO-12 – Issuance of a water quality certification (Clean Water Act Section 401) and a Streambed Alteration Agreement.

With the inclusion of these mitigation measures, the MND concludes that the bridge can be constructed over the lagoon channel without impacting sensitive biological resources.

Comment: *How can the existing bridge be removed without impacting the lagoon environment?*

Response: Dismantling and removal of the existing sewer pipe bridge can be performed with crane equipment stationed on the adjacent staging area pads outside of the lagoon channel without any significant impact to the channel. The MND analysis concludes (page 30) that the removal of the existing bridge will be a beneficial impact to the lagoon environment.

D.3. Environmental Setting – Surrounding Land Uses

Comment: *The Project Description does not adequately describe the EPS operations and how the project may affect construction activities of the proposed CECP.*

Response: The MND Project Description properly describes the proposed Sewer Lift Station, Force Main, and Gravity Sewer replacement project. The environmental analysis further describes the anticipated impacts associated with the project on the environment, including those impacts to the EPS. (See Project Description pages 14 and 17) As stated previously, the MND adequately analyzes the project's potential environmental impacts and considers its avoidance of impacts to existing EPS operations. This avoidance includes placing the lift station in a northernmost corner of the EPS site, limiting the utility lines to a narrow work area, the use of horizontal directional drilling (HDD) to minimize trenching, and other factors which could otherwise contribute to disturbances to the EPS. Notwithstanding the findings of no significant impact (page 80), staff will recommend to the City Council at its April 26, 2011 meeting that it direct staff to conduct further analysis in regard to any impacts of the project on the proposed CECP, and if warranted, to revise and recirculate the MND document per CEQA Guidelines § 15073.5(a).

Comment: *The Project Description does not disclose the expansion of easements.*

Response: The MND Project Description (page 4) indicates that "In locations where easements do not already exist, easements will be acquired for the facilities." The existing and proposed easements are clearly shown on the plans for the project which were the subject of the MND analysis and which are described in the MND Project Description. As shown on these plans, a total of 12.5 feet of additional easement width will be necessary to accommodate the proposed project. The 12.5 feet is situated in area that is presently disturbed or paved areas, or used primarily for access roadway within the EPS property. Furthermore, the sewer pipeline will be installed via horizontal directional drilling (HDD) method that allows the installation of the pipeline without open trench disturbance to the surface of the ground.

D.4. Aesthetics

Comment: *The removal of 12 eucalyptus trees would require visual impact mitigation.*

Response: The MND both discusses and provides post-development photosimulations which describe and demonstrate views toward the project from three separate viewpoints. These photosimulations show the project with all 12 eucalyptus trees removed, and the proposed project constructed. All 12 trees will be removed from the west side of the property only. No significant visual impact is identified. Further, the project plan package includes a Landscape Concept Plan.

This Landscape Concept Plan proposes replacement of the removed non-native eucalyptus trees with twelve (12) drought tolerant screening trees, such as the Cajeput Trees (*Melaleuca quinquenervia*), New Zealand Christmas Trees (*Metrosideros excelsus*), and Strawberry Trees (*Arbutus unedo*). These trees grow to a height of 35, 30 and 25 feet, respectively, are evergreens and will thus adequately replace the eucalyptus screening effect on the site. These trees are part of the proposed project design plans, and thus it was unnecessary to include their planting as a separate mitigation measure for aesthetics. Furthermore, mitigation for the removal of the eucalyptus trees, which are listed as Habitat Group F - Eucalyptus Woodlands in the city's Habitat Management Plan ("HMP"), dated November 2004, is mitigated at a 0.1:1 ratio per the HMP. Please see mitigation measure BIO-1 in the MND on page 45.

D.5. Air Quality

Soil Export

Comment: *The "acceptable offsite location" for deposit of exported soil is not defined and the traffic/pollution impacts associated with the export hauling is not quantified in the Air Quality section of the MND. The soil's condition and potential of hazardous materials impacts are not identified.*

Response: The pollutants associated with this soil hauling are included in the analysis (page 37) in Table 2 under the category "Haul/Dump Trucks". As indicated in the MND, this analysis assumes an approximate 30-mile round trip for transport and deposit of the export soil. Thus, the deposit (or stockpile) location is assumed to be within a 15 mile radius of the lift station site. This radius would include all of Carlsbad, and much of the cities of Oceanside, San Marcos and Encinitas. Subsequently, we have identified four or five potential stockpile sites that are within half of this assumed distance from the site. This reduced distance would reduce the projected air quality impacts (and thus the greenhouse gas impacts) below that analyzed in the MND, and since the construction emissions exceedance from N_{ox} is primarily due to truck hauling of export soil and gravel (pages 36-37), it is anticipated that the resulting actual emissions level would most likely fall below the threshold level of significance. Thus, the air quality analysis provided in the MND is a worst-case scenario for air quality impacts related to the export of soil.

Nonetheless, as stated previously, in an effort to more thoroughly document the project's cumulative impacts including the quantification of cumulative GHG impacts from this and a number of surrounding speculative projects, staff will recommend to the City Council at its April 26, 2011 meeting that it direct staff to conduct further cumulative impacts analysis and if warranted, to revise and re-circulate the MND document per CEQA Guidelines § 15073.5(a).

Further, the CEQA analysis included a Limited Environmental Due Diligence Review (hazardous materials records report) by Brown & Caldwell (2007) which addressed inventory of the state and federal lists of hazardous materials sites in the area, and an Environmental Soil and Groundwater Sampling, by Ninyo and Moore (2009) for the project. The conclusions of these reports are included on pages 60-61 of the MND. An adequate analysis of the soil's condition and hazards has been provided.

Ozone

Comment: *CEQA does not permit de minimus finding conclusion of N_{ox} in the Air Quality Analysis.*

Response: The MND does not find that the N_{ox} emissions in excess of the APCD Threshold are de minimus. Rather, it finds (page 37) that the excess is a significant impact which must be mitigated through the inclusion of a mitigation measure articulated on page 37 as AQ-1.

The CEQA "substantial evidence" test requires only a determination as to whether the evidence is such that "a reasonable mind might accept it as adequate to support a conclusion" (*Bowman v. City of Petaluma*, 185 Cal. App. 1986). Substantial evidence includes "reasonable assumptions predicated upon facts, and expert opinion supported by facts" (CEQA Statutes §21080(e)). The N_{ox} impacts exceed the APCD standards threshold by only 1%, (page 37) and are temporary (during construction only) impacts. Although this mitigation measure does not constitute a considerable change in design or construction methodology for the project, the measure is adequate to mitigate the minor, temporary excess of emissions beyond the threshold of significance.

Mitigation Measure AQ-1

Comment: *Mitigation Measure AQ-1 is already assumed in the APCD's significance thresholds and therefore identifying as a mitigation measure cannot reduce to less than significant.*

Response: The city disagrees that the requirement of AQ-1 is already assumed in the APCD's significance thresholds. These thresholds and the formulas for pollutant projections are indicated by the APCD as being based upon the historical averaging of monitoring data from hundreds of construction operations. During construction operations diesel equipment routinely is left idling for long periods of time, unnecessarily distributing pollutants into the air. Mitigation Measure AQ-1 prohibits this practice and will thus incrementally decrease the air quality impacts which are projected to result from the construction operation to below a level of significance.

Sensitive Receptors

Comment: *The YMCA aquatic recreation area and Coastal Rail Trail are not identified as sensitive receptors.*

Response: Sensitive receptors are defined by the APCD (APCD Guidelines for Submission of Health Risk Assessments, 2006) as; "schools (grades Kindergarten through 12), day-care centers, nursing homes, retirement homes, convalescent centers, health clinics, and hospitals." This has been further clarified for staff by San Diego APCD as locations of gatherings of population who are particularly susceptible to health effects due to exposure to air contaminants, also including; long-term health care facilities, rehabilitation centers, convalescent centers, and retirement homes. Aquatic recreation centers and public trails are not included on this list. Therefore the MND determination that these uses are not sensitive receptors is valid.

Odors

Comment: *Air scrubbers and carbon filters are relied upon to control odors. Maintenance of these features should be required as a mitigation measure and included in the MMRP. Also there is no evidence demonstrating that these filters will effectively control noxious odors.*

Response: Installation, monitoring and maintenance of air scrubbers and carbon filters are identified as a part of the proposed project in the Project Description (page 14) and described again in the environmental analysis (page 38). As such, including an additional mitigation measure requiring these features would be redundant. Further, CEQA does not require an analysis of the specific effectiveness of each piece of equipment used to minimize environmental impacts of a project. As stated previously, CEQA Guidelines § 15151 requires only that "a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive..." Furthermore, this section also states, "The

courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure."

The design plans for the proposed lift station analyzed in the MND provide for air scrubbers and carbon absorbers to control odor. Proper operations and maintenance of the station will result in effective odor control. More specifically, the Project Description in the MND states on page 38, that, *"odor control treatment at the lift station will include, but not be limited to; air scrubbers and carbon absorbers. These features remove odors and volatile organic compounds from the sewage transport process. Odor control performance will be constantly monitored and maintained by the Carlsbad maintenance crews to ensure the system is operating properly."*

CEQA requires that the lead agency identify impacts from a project that could result in substantial damage to the physical environment. It is not necessary to document and analyze every minute detail of the project or its construction or maintenance operations. In the case of odor impacts, no adopted threshold of significance exists. The City has used the independent judgment of experts who are familiar with the project area and our local circumstances to assess whether the project, as designed with odor control, could have the potential to cause substantial environmental harm. The evaluation concluded that the revisions made to the project, including the odor control features, as agreed to by the applicant before the MND was released to the public, reduced the impacts to a level of less than significant.

Furthermore, the odor scrubber apparatus for this lift station must be issued a permit from the APCD prior to construction. This permit will require a demonstration of effectiveness of the equipment to the satisfaction of the APCD. City of Carlsbad maintenance crews monitor daily every sewer lift station of greater than 1 mgd capacity within the city. Crews provide city management with regular reports on the ongoing status and effectiveness of the odor control compounds associated with the routine frequent monitoring of these stations. In this way the city ensures the effectiveness of these protective features.

As previously mentioned, a detailed discussion of the incidental overhead electrical line relocation during construction is not required by CEQA and the city has made a good faith effort to analyze the significant aspects of the project. Again, as indicated above, CEQA Guidelines § 15151 requires only that *"a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive..."*

D.6. Cultural Resources

Comment: *Mitigation measure CUL-1 defers mitigation and thus is not allowed through an MND.*

Response: Mary Robbins-Wade, M.A. (RPA), a professional archaeologist with Affinis, prepared the Archaeological Resources Survey (May 2009) information for the CEQA document. Ms. Robbins-Wade states in her report (page S-1 – Management Summary) that, *"The Agua Hedionda Sewer and Lift Station APE was surveyed for cultural resources in April 2009 by an Affinis archaeologist and a Native American monitor from Saving Sacred Sites. No evidence was found of CA-SDI-10,478, which was recorded adjacent to the north end of the project APE. No evidence of CA-SDI-210 was noted in the immediate area of the APE. Marine shell was found in the mapped area of CA-SDI-6751; however, all the soil in this area appeared to be dredge spoils and other fill. No cultural material was observed in these soils. No other cultural material was found within the APE."* This information was also included in the MND on page 51. The analysis provided in the MND is consistent with the level of analysis requirements of CEQA Statutes §21083.2. Mitigation Measures CUL-1 and CUL-2, which require an archaeologist and a Native American monitor on site during all trenching activities, will adequately mitigate for the potential impacts to cultural resources.

D.7. Geology

Comment: *A geotechnical analysis of potential adverse soils impacts to the future CECP should be provided in the CEQA document.*

Response: The installation of utility piping lines such as those proposed will not result in soil settlement, spread or subsidence in the area. Trenches and horizontal directional drilling ("HDD") will be designed and constructed by professional personnel, in accordance with OSHA regulations. A Soils Report (Geotechnical Report, Ninyo & Moore, August 23, 2009) has been prepared which is included in the Technical Appendices of the MND and referenced on page 54 of the MND. The report concludes that "*due to the depth of the proposed pipelines, settlements are not anticipated to impact surface improvements and underground utilities.*"

Comment: *The MND doesn't analyze potential impacts to existing electrical buildings and high voltage wires.*

Response: CEQA requires only that the MND address effects that have a substantial, or potentially substantial adverse change in the environment (CEQA Statutes §21068 and CEQA Guidelines §15064). As explained in the response above, the proposed project is primarily underground, situated in an area in which no buildings exist or are planned. We conclude that the project will have no substantial adverse environmental impact on existing electrical buildings and high voltage wires.

D.8. Greenhouse Gases

Comment: *No quantitative or qualitative analysis of greenhouse gases is provided.*

Response: In 2010, the California Natural Resources Agency adopted amendments to the CEQA Guidelines which required CEQA documents to add a project's greenhouse gas ("GHG") impacts to the list of the environmental impacts that must be analyzed under CEQA. They did not however dictate a precise analytic methodology or significance threshold for determining the significance of a project's GHG emission impacts. The amended guidelines generally reserve discretion to the lead agency in determining the method of reaching their significance determination.

The MND's GHG analysis recognizes (page 57) that no specific significance threshold exists for greenhouse gases that would apply to the subject project and that the project is not inconsistent with plans, policies or regulations adopted to implement any statewide, regional, or local plan for the reduction or mitigation of GHG emissions. The project further (including the Air Quality Mitigation Measures) complies with the ARB air quality standards. Therefore, the analysis provides sufficient qualitative and quantitative analysis and complies with CEQA Guidelines §15064(h)(3) and §15064.4. Nonetheless, as mentioned, in an abundance of caution, staff will be recommending to the City Council that it direct staff to conduct additional analysis of cumulative impacts associated with the project, including the CECP project, and if warranted, to revise and recirculate the MND document per CEQA Guidelines § 15073.5(a).

D.9. Hazards

Comment: *The MND fails to analyze impacts resulting from sewer spill from collapse of the bridge or from potential lift station/pipeline leaks.*

Response: CEQA Statute §21159 requires one to analyze impacts resulting from "*reasonably foreseeable*" environmental impacts. Collapse of the bridge would be a highly improbable accident, and thus would not fall into the category of "*reasonably foreseeable*". The bridge will be constructed to current bridge design standards adopted by the State of California.

In an effort to mitigate the potential for sewer spill during construction, Mitigation Measure BIO-11 (page 46) has been included in the MND. This mitigation measure requires the preparation of a Spill Containment Plan and an Emergency Frac-out Plan (for Horizontal Directional Drilling tunneling construction), respectively.

Also, as discussed in the Project Description (page 15) the lift station design incorporates extensive equipment and electrical redundancy and upstream storage capacity as a precautionary fail-safe for ensuring that the unlikely event of equipment failure does not result in sewage spills. The hazards analysis of the fail-safe design protections from sewer spill is addressed in detail on page 59 of the MND.

With the inclusion of the biological mitigation measure and the equipment and electrical redundancy and storage capacity, the potential for sewer spill impacts to the surrounding area from lift station or pipeline leaks is mitigated to a level of insignificance.

Comment: *The MND fails to analyze impacts to the existing facilities such as allowing pedestrians along the Coastal Rail Trail next to the CECP.*

Response: As previously mentioned, the CRT is not proposed as part of this project which has independent utility from the proposed CRT segment. Furthermore, the alignment of the CRT has not been determined. The proposed sewer bridge location and design has been determined by the needs for the sewer pipe. This bridge can accommodate the CRT on either the east or west side of the railroad tracks when and if the project is funded and the alignment determined. Nonetheless, as indicated previously, staff will recommend to the City Council that it direct staff to conduct further analysis in regard to the proposed CECP and if warranted, to revise and recirculate the MND document per CEQA Guidelines § 15073.5(a).

D.10. Hydrology/Water Quality

Comment: *No measures are included which would reduce or eliminate the possibility of a sewer spill. The mitigation measures requiring an action plan in the case of spill or upset should be identified in the CEQA document and not deferred to the construction phase.*

Response: The MND includes Mitigation Measure BIO-11, which requires the applicant to prepare a final Spill Contingency Plan that outlines actions to be taken in the event that an accidental discharge of construction fluids occurs. Also, as mentioned above, the lift station design incorporates extensive equipment and electrical redundancy and upstream storage capacity as a fail-safe for ensuring that equipment failures do not result in sewage spills. In addition, the project will comply with the city's Sanitary Sewer Management Plan, which was adopted by City Council Resolution No. 2009-192 to ensure that discharges from the sanitary sewer system do not occur. The mitigation measure, project design, and plan compliance demonstrate the city has responsibly addressed the possibility of a sewer spill and has not deferred the mitigation until a future time.

CEQA places the burden on the party challenging a mitigation measure to show that it is inadequate. No evidence has been provided that the required spill containment plans will not reduce the adverse impacts of the project to a level of insignificance.

D.11. Recreation

Comment: *No analysis of impacts associated with bringing recreation (Coastal Rail Trail) into the power plant and lagoon area is provided.*

Response: As stated previously, the CRT is not proposed as part of this project. The alignment of the CRT has not been determined. The proposed sewer bridge location and design has been

determined by the needs for the sewer pipe and can accommodate the CRT on either the east or west side of the railroad tracks when and if the project is funded and the alignment determined.

D.12. Cumulative Impacts

Aesthetics

Comment: *The MND Cumulative Impacts analysis fails to take into account the widening of I-5; or the visual impact to the CECP from the removal of 12 trees.*

Response: The City's analysis concludes that the proposed project is located a minimum of 850 feet from the potential widened southbound lanes, too far for any impacts from or to I-5 freeway motorists to be significant. The removal of the 12 trees and the mitigation thereof has been previously addressed in this letter. The trees to be removed are located in the area of the proposed lift station, on the opposite side of the property from I-5. In an abundance of caution however, the staff is recommending to the City Council that it direct staff to more thoroughly address cumulative impacts of the proposed project, in conjunction with other future projects in the area, including the I-5 widening.

Air Quality

Comment: *Cumulative impacts on air quality are lacking.*

Response: The MND analyzes the cumulative impacts of a number of reasonably foreseeable pending or planned projects which have a nominal relationship to the proposed project, and which, taken together, could possibly result in a collectively-significant change in the environment. The MND concludes (page 99) that these cumulative projects would result in potentially significant impacts with respect to Air Quality, Biological Resources and Cultural Resources. The MND further concludes that, assuming mitigation measures for the cumulative projects similar to those adopted in the subject MND that the projects in combination with the proposed project would not result in significant environmental impacts. The level of analysis provided is consistent with the requirements of CEQA Guidelines §15130.

Greenhouse Gas Emissions

Comment: *Cumulative greenhouse gas emissions impacts on air quality are not quantified.*

Response: Based on the information available, and on the substance of the 2010 Amendments to the CEQA Guidelines, cumulative GHG impacts on air quality are analyzed in the MND (pages 56-57 and 99-100). Note also that the air quality analysis concludes that the sewer line and lift station will result in significant air quality impacts during the construction operation only. And the proposed project will not result in direct greenhouse emissions because it does not directly produce gases or emissions (page 60). As indicated in the MND, GHG impacts are primarily a result of electricity use from the EPS. Also, as indicated in CEQA Guidelines § 15064(h)(4); "*The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.*" As stated previously, in an effort to more thoroughly document the project's cumulative impacts including the quantification of cumulative GHG impacts from this and a number of surrounding speculative projects, staff will recommend to the City Council at its April 26, 2011 meeting that it direct staff to conduct further cumulative impacts analysis and if warranted, to revise and re-circulate the MND document per CEQA Guidelines § 15073.5(a).

Recreation

Comment: *Cumulative impacts from other segments of the Rail Trail are not addressed.*

Response: The proposed project will have no impact from any other segments of the CRT inasmuch as those segments are not in the vicinity of the proposed project, are not related to the proposed project, which has independent utility. Nonetheless, staff is recommending that the City Council direct staff to conduct additional analysis of cumulative impacts of the project and the CRT, as indicated previously.

CECP Power Plant Project

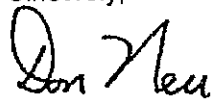
Comment: *The MND must address the CECP when analyzing cumulative impacts.*

Response: The cumulative impact section of the MND (pp. 98-100) does analyze the impact from the proposed project upon the "NRG Power Plant Expansion". This analysis concludes that three environmental issues could occur, but that these impacts would be expected to be mitigated by mitigation measures proposed for adoption in the MND. Furthermore, as stated previously, staff will recommend to the City Council at its April 26, 2011 meeting that it direct staff to conduct further analysis in regard to the proposed CECP and if warranted, to revise and recirculate the MND document per CEQA Guidelines § 15073.5(a).

E. Conclusion

As a result of the responses above, the city concludes that the MND is legally adequate and consistent with CEQA, and the proposed project design is consistent with that provided to and discussed with NRG staff without their objection. Furthermore, the project will not have any significant effect on the environment since all potentially significant impacts resulting from the project have been mitigated to a level of insignificance. Nonetheless, staff will recommend to the City Council at its April 26, 2011 meeting that it direct staff to conduct further analysis in regard to the proposed CECP and if warranted to revise and recirculate the MND document per CEQA Guidelines § 15073.5(a). Assuming this action is confirmed by the City Council, we are hopeful that your client will find that the revised CEQA document responds to your comments and answers its questions sufficiently. The City will send a copy of the revised document to your client as soon as it is completed.

Sincerely,



DON NEU
City Planner

Attachments

c: Ron Ball, City Attorney
Jane Mobaldi, Assistant City Attorney
Ronald Kemp, Deputy City Attorney
Bill Plummer, Deputy City Engineer
Terry Smith, Senior Civil Engineer
David de Cordova, Principal Planner
Pam Drew, Associate Planner

PROOF OF PUBLICATION (2010 & 2011 C.C.P.)

STATE OF CALIFORNIA
County of San Diego

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of

Proof of Publication of

North County Times

Formerly known as the Blade-Citizen and The Times-Advocate and which newspapers have been adjudicated newspapers of general circulation by the Superior Court of the County of San Diego, State of California, for the City of Oceanside and the City of Escondido, Court Decree number 171349, for the County of San Diego, that the notice of which the annexed is a printed copy (set in type not smaller than nonparel), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

August 17th, 2010

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

CITY OF CARLSBAD

Dated at Escondido, California

AUG 24 2010

This 17th, day of August, 2010

Community & Economic
Development Department

Jane Allshouse

NORTH COUNTY TIMES
Legal Advertising

**NOTICE OF INTENT TO ADOPT A
MITIGATED NEGATIVE DECLARATION**

CASE NAME: AGUA HEDIONDA SEWER LIFT STATION AND GRAVITY AND FORCE MAINS
CASE NO.: PDP 00-02(C) / SP 144(L) / RP 10-26 / CDP 10-17 / HDP 10-05 / SUP 10-02 / HMP 10-03

PROJECT LOCATION: Between the coastline to the west and the I-5 freeway to the east, the project extends from the north side of Agua Hedionda Lagoon, approximately 500 feet south of Chiquapin Avenue and east of the railroad tracks, within the railroad r.o.w. The project continues south, on the east side of and parallel with the railroad tracks and continues through the intersections of Cannon Road and Palomar Airport Road within the public right-of-way on Avenida Encinas. The project ends at the existing Encina Water Pollution Control Facility.

PROJECT DESCRIPTION: The proposed project involves the installation of a sewer trunk line (3,660-foot long force main and a 8,420-foot long gravity sewer line); a sewer lift station (50 million gallons/day capacity); and a sewer support bridge (140-foot weathered steel span) improvements on the Vista/Carlsbad Sewer Interceptor System, segments VC11, VC12, VC13, VC14, and VC15. The proposed project extends a total distance of approximately 12,380 linear feet (2.35 miles) in a north-south direction located in coastal Carlsbad from the Agua Hedionda Lagoon to the Encina Water Pollution Control Facility. The project also proposes a number of associated improvements in the same work area, including installation of a recycled water line, replacement of a potable water line, demolition of an existing sewer lift station and concrete overflow basin, demolition of the wood trestle for the existing sewer line and the option of relocating a section of an existing high pressure gas transmission line from its existing trestle bridge (and removal of the bridge) to the new sewer bridge.

PROPOSED DETERMINATION: The City of Carlsbad has conducted an environmental review of the above described project pursuant to the Guidelines for Implementation of the California Environmental Quality Act (CEQA) and the Environmental Protection Ordinance of the City of Carlsbad. As a result of said review, the Initial Study (EIA Part 2) identified potentially significant effects on the environment; but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and Initial Study are released for public review would avoid the effects or mitigate that effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the City that the project "as revised" may have a significant effect on the environment. Therefore, a Mitigated Negative Declaration will be recommended for adoption by the City of Carlsbad City Council and the City of Carlsbad Housing and Redevelopment Commission.

A copy of the Initial Study (EIA Part 2) documenting reasons to support the proposed Mitigated Negative Declaration is on file in the Planning Division, 1635 Faraday Avenue, Carlsbad, California 92008. Comments from the public are invited. Pursuant to Section 15204 of the CEQA Guidelines, in reviewing Mitigated Negative Declarations, persons and public agencies should focus on the proposed finding that the project will not have a significant effect on the environment. If persons and public agencies believe that the project may have a significant effect, they should: (1) identify the specific effect; (2) explain why they believe the effect would occur; and (3) explain why they believe the effect would be significant. Please submit comments in writing to the Planning Division within 30 days of the date of this notice.

The proposed project and Mitigated Negative Declaration are subject to review and approval/adoption by the City of Carlsbad Planning Commission and City Council. Additional public notices will be issued when those public hearings are scheduled. If you have any questions, please call Pam Drow in the Planning Division at (760) 602-4644.

PUBLIC REVIEW PERIOD August 17, 2010 - September 16, 2010
PUBLISH DATE August 17, 2010 nct 2267670

PROOF OF PUBLICATION (2010 & 2011 C.C.P.)

STATE OF CALIFORNIA
County of San Diego

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of

North County Times

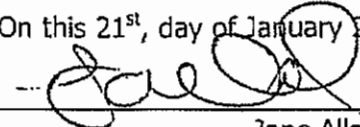
Formerly known as the Blade-Citizen and The Times-Advocate and which newspapers have been adjudicated newspapers of general circulation by the Superior Court of the County of San Diego, State of California, for the City of Oceanside and the City of Escondido, Court Decree number 171349, for the County of San Diego, that the notice of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

January 21st, 2011

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Escondido, California

On this 21st, day of January 2011


Jane Allshouse
NORTH COUNTY TIMES
Legal Advertising



PLANNING COMMISSION PUBLIC HEARING

NOTICE IS HEREBY GIVEN to you, because your interest may be affected, that the Planning Commission of the City of Carlsbad will hold a public hearing at the Council Chambers, 1200 Carlsbad Village Drive, Carlsbad, California, at 6:00 p.m. on Wednesday, February 2, 2011, to consider the following:

PDP 00-02/C/SP 144/L/RP 10-26/CDP 10-17/HOP 10-05/SUP 10-02/HMP 10-03 - AGUA HEDIONDA SEWER LIFT STATION, FORCE MAIN AND GRAVITY SEWER REPLACEMENT - Request for: 1) adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; 2) a recommendation of approval for a Precise Development Plan Amendment, Specific Plan Amendment, Redevelopment Permit, and 3) approval of a Coastal Development Permit, Hillside Development Permit, Special Use Permit (Floodplain), and Habitat Management Plan Permit.

The requested actions are for: 1) an amendment to the Precise Development Plan for the Encina Power Station (EPS) and the proposed 50 million gallon per day (mgd) capacity Agua Hedionda Sewer Lift Station and associated improvements (SLS) proposed at the EPS; 2) an amendment to the Encina Specific Plan to incorporate the proposed SLS; 3) a Redevelopment Permit for the SLS and associated piping within the boundaries of the South Carlsbad Coastal Redevelopment Area; and 4) a Coastal Development Permit, Hillside Development Permit, Special Use Permit (Floodplain), and Habitat Management Plan Permit.

The total sewer project consists of a new 3,960-foot long force main (sewer line) and an 8,420-foot long gravity sewer line, a 50 mgd capacity SLS, associated utility relocations (natural gas, transmission and electrical overhead relocations) and a pipe-support bridge spanning 140-feet across the Agua Hedionda Lagoon channel. The proposed project extends a total distance of approximately 12,380 linear feet (2.35 miles) in a north-south direction from near Chiquapin Avenue, south of Tamarack Avenue, to the Encina Wastewater Pollution Control Facility (EWPCF) on Avenida Encinas, south of Palomar Airport Road.

The project will be constructed in three phases within the City's Coastal Zone. The locations and phases are as follows: Phase 1 - Cannon Road to the EWPCF within the public right-of-way on Avenida Encinas (sewer and gravity force main and 12-inch recycled water line); Phase 2 - south of Chiquapin Avenue to the south-side of the Agua Hedionda Lagoon within San Diego Northern Railroad (SDNR) right-of-way (gravity sewer, including the pipe support bridge, 12-inch recycled water line and 6-inch potable water line); and Phase 3 - southern edge of the lagoon to Cannon Road within SDNR, NRG, SDG&E, and West Development properties and within the city's public right-of-way on Avenida Encinas (SLS, sewer/force main, and 12-inch recycled water line). The proposed project is located within Local Facilities Management Zones 1, 3, and 22.

The project has potentially significant impacts in the areas of air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, land use, transportation/circulation, and mandatory findings of significance. To reduce these potentially significant impacts to a less than significant level, mitigation measures contained in the project's MMRP, are required. The City Planner issued a Notice of Intent to adopt a Mitigated Negative Declaration.

This project is not located within the appealable area of the California Coastal Commission.



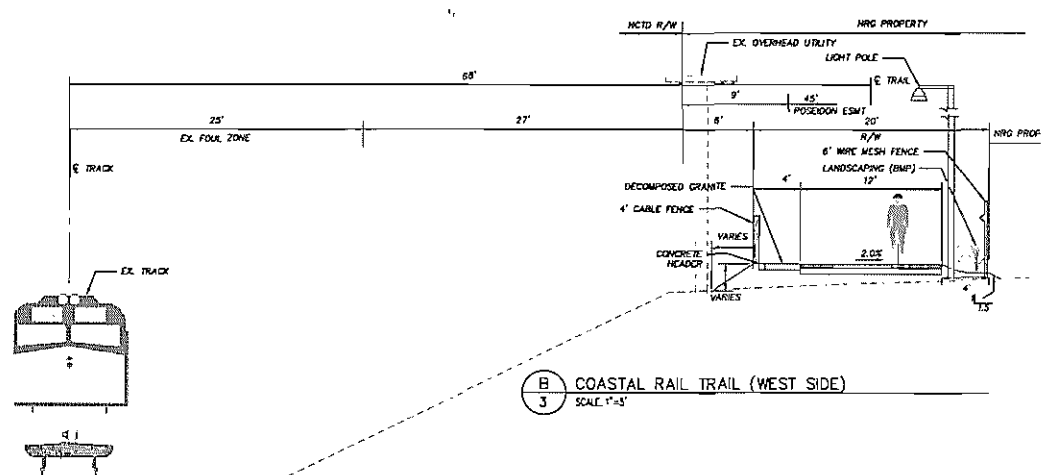
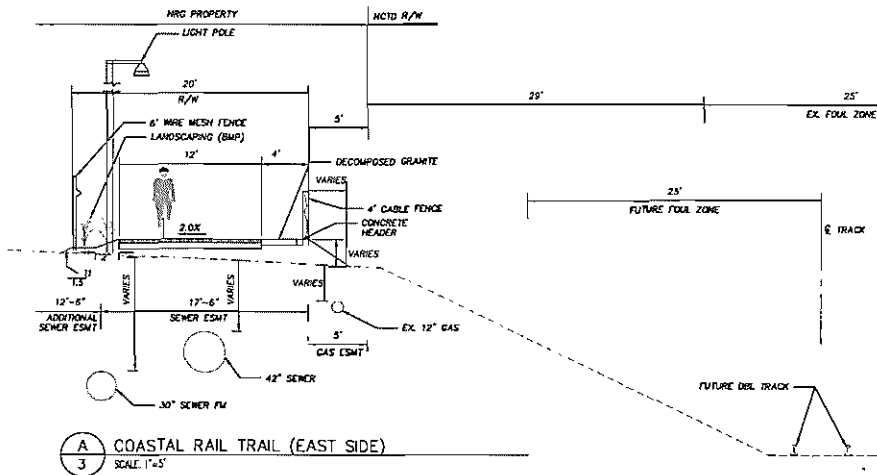
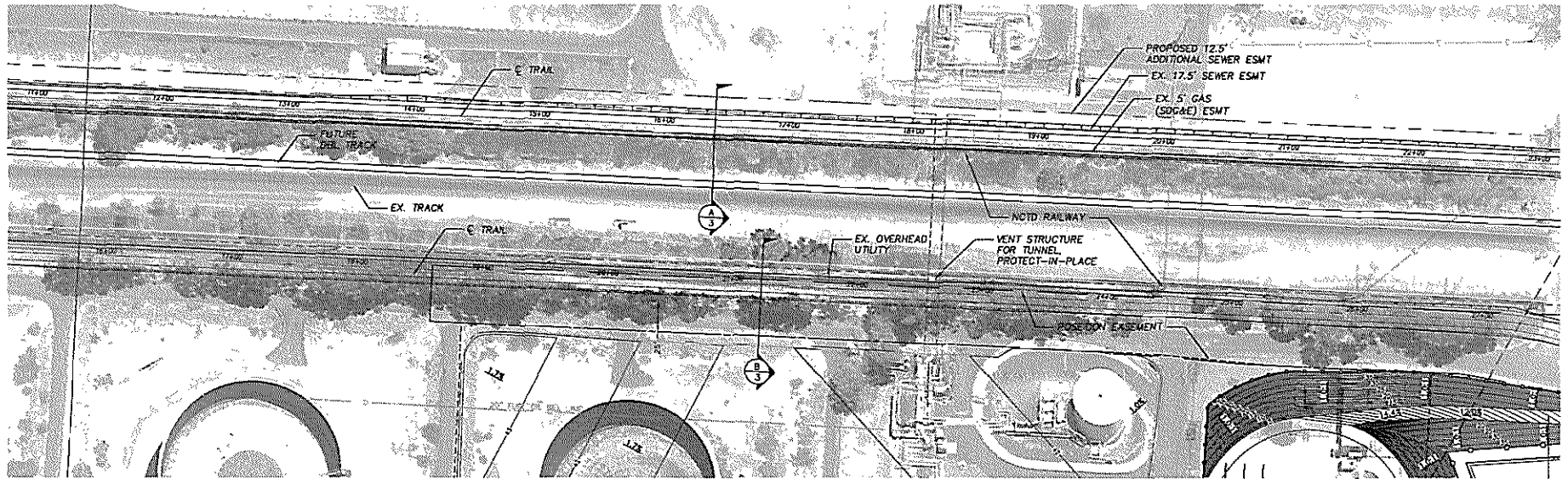
If you challenge these projects in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City of Carlsbad at or prior to the public hearing.

Copies of the environmental documents are available at the Planning Division at 1635 Faraday Avenue during regular business hours from 7:30 am to 5:30 pm Monday through Thursday and 8:00 am to 5:00 pm Friday.

Those persons wishing to speak on these proposals are cordially invited to attend the public hearing. Copies of the staff reports will be available online at http://carlsbad.gramicus.com/ViewPublisher.php?view_id=6 on or after the Friday prior to the hearing date. If you have any questions, please call the Planning Division at 760-602-4600.

PUBLISH: January 21, 2011
CITY OF CARLSBAD PLANNING DIVISION

ncl 2281295



1. SCALE: 30' HORIZ. TO 1\"/>



SCALE 1" = 40'
0' 20' 40' 60' 80'



CITY OF CARLSBAD
Public Works

DATE	INITIAL	REVISION DESCRIPTION	DATE	INITIAL	DATE	INITIAL

CONCEPTUAL DESIGN

SHEET 3 CITY OF CARLSBAD ENGINEERING DEPARTMENT SHEETS 12

COASTAL RAIL TRAIL - REACH 3

EAST & WEST ALIGNMENT

11+00 TO 23+00 & 16+00 TO 27+00

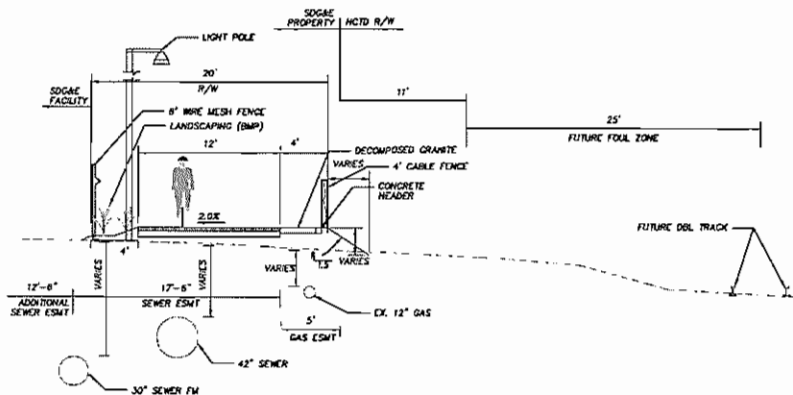
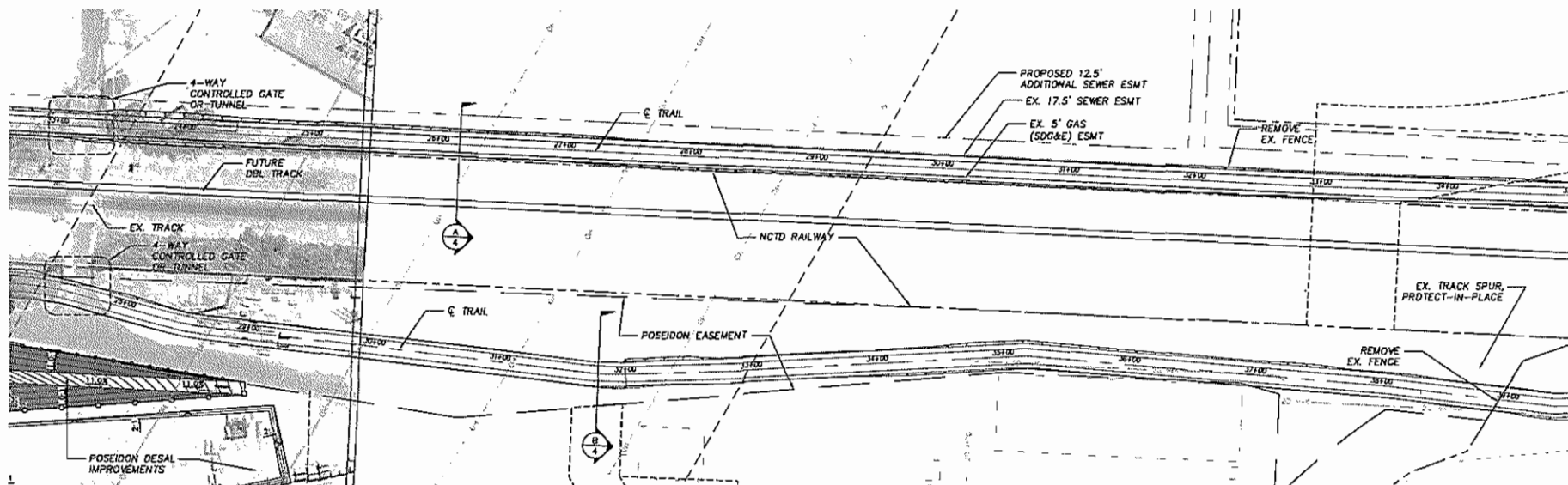
APPROVED WILLIAM E. PLUMMER

DEPUTY CITY ENGINEER FE 26136 EXPIRES 12/31/2016

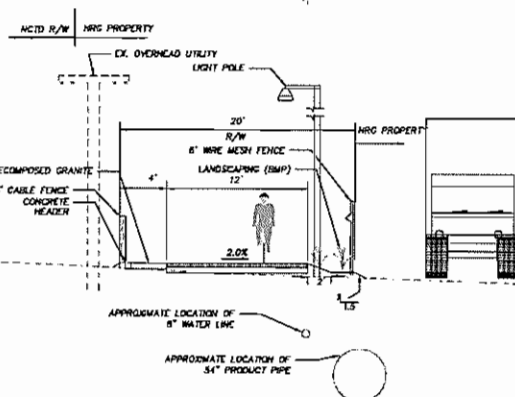
DWN BY: JWP PROJECT NO. 3455 DRAWING NO. XXX-X

CHKD BY: JWP

RYMD BY: JWP



A COASTAL RAIL TRAIL
4 SCALE 1"=5'



B COASTAL RAIL TRAIL
4 SCALE 1"=5'



SCALE 1" = 40'
0' 20' 40' 60' 80'



CITY OF
CARLSBAD
Public Works

DATE	INITIAL	REVISION DESCRIPTION	DATE	INITIAL	DATE	INITIAL

CONCEPTUAL DESIGN

SHEET 4 CITY OF CARLSBAD
ENGINEERING DEPARTMENT **SHEETS 12**

COASTAL RAIL TRAIL - REACH 3
EAST & WEST ALIGNMENT
23+00 TO 34+00 & 28+00 TO 39+00

APPROVED WILLIAM E. PLUMMER
DEPUTY CITY ENGINEER PER 20128 EXPIRES 3/31/20 DATE

DWN BY: PROJECT NO. **3455** DRAWING NO. **XXX-X**
CHD BY: REV'D BY:

CITY OF CARLSBAD

COUNCIL POLICY STATEMENT

General Subject: REQUIREMENTS NECESSARY TO
SATISFY THE PUBLIC FACILITIES
ELEMENT OF THE GENERAL PLAN

Specific Subject:

Policy No. 17
Date Issued 7/2/91
Effective Date 7/2/91
Cancellation Date
Supersedes No. 17 Issued
7/28/87

Copies to: City Council, City Manager, City Attorney, Department and Division Heads,
Employee Bulletin Boards, Press, File

BACKGROUND

In order to protect the public health, safety and general welfare of all the citizens of Carlsbad and to ensure a continued high quality of life within the City, the Public Facilities Element of the Carlsbad General Plan requires that an applicant or proponent of a development project present evidence satisfactory to the City Council that all necessary public services and facilities will be available concurrent with community needs before any zoning, subdivision, development, or redevelopment approval or permit may be given or issued.

It is the policy of the City to mitigate the public service and facilities impacts created by new development and ensure that all public services and facilities will be provided in the manner which will ensure the continued high quality of life in Carlsbad. Prior to July 3, 1979, the City Council relied on a report of availability of public facilities and services received from City staff. On July 3, 1979, the City Manager reported that in the future, those services and facilities cannot be made available to new development from the City's resources. As a result of that report, the City Council adopted City Council Policy No. 17 on August 29, 1979. Policy No. 17 has subsequently been amended at various times by the City Council. The most recent amendment to City Council Policy No. 17 was effective on April 10, 1984. The City Council has been provided with various reports and information by the City staff since the adoption of City Council Policy No. 17 and the City Council finds that the facts and circumstances which required the adoption of Policy No. 17 continue to exist. On January 21, 1986, the City Council adopted Urgency Ordinance No. 9791 after a finding on January 14, 1986 that establishment of the development management system and public facilities and improvement phasing plan for the City was required to eliminate public facility shortages and to protect the community character and quality of life in Carlsbad. This system and plan is required in addition to the requirements established by City Council Policy No. 17. On March 25, 1986, the City Manager reported to Council on the status of public facilities in Carlsbad and recommend an increase in the public facility fee. This report identified a list of facilities and services which would be funded by the public facilities fee. The list was approved by the City Council. In addition to the fee established pursuant to City Council Policy No. 17, the City requires developers to provide public improvements by a variety of different means. By utilization of all available methods, the City Council will be able to find that public facilities will be provided concurrent with need as required by the Public Facilities Element of the Carlsbad General Plan.

CITY OF CARLSBAD

COUNCIL POLICY STATEMENT

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On July 28, 1987, the City Council accepted a revised report on the availability of public facilities and adopted a revised public facilities fee of 3.5% which allows for interest costs associated with debt financing library and civic buildings.

On June 25, 1991, the City Council introduced and on July 2, 1991, adopted the necessary ordinances and resolutions to place into operation Community Facilities District No. 1, a Community Facilities District (CFD) established by the voters within its boundaries in order to provide a guaranteed source of funds for several critical public projects. This list of projects included the main Library facility and future Library expansions, a City administrative office, and a portion of Macario Canyon Park, all projects previously financed through the Public Facilities Fee program. With the implementation of the CFD, the City now had the ability to levy taxes on property within the boundaries of the CFD to finance these three projects. This ability to levy a tax in advance of development takes the place of the need to collect a public facility fee, or at least that portion of the fee applicable to these three projects.

On June 25, 1991, the City Council adopted this revised Council Policy allowing a credit against the 3.5% public facility fee for properties within the boundaries of and subject to taxation by the CFD. The amount of this credit is based on the proportion of PFF projects now funded through the CFD. The credit amount is 1.68%, thereby reducing the PFF for qualified properties to 1.82%.

Any property not within the CFD boundaries and subject to taxation by the CFD shall continue to be subject to the additional License Tax on New Construction as established by Chapter 5.09 of the Carlsbad Municipal Code.

PURPOSE:

1. To establish a policy regarding the requirements which must be met before the City Council will find that the Public Facilities Element has been satisfied.
2. To establish a policy that will allow development to proceed in an orderly manner while insuring that the requirements of the Public Facilities Element will be satisfied by establishing a fee to fund the cost of City-provided facilities, including but not limited to: parks, major streets, traffic signals, storm drains, bridges and public buildings such as fire stations, police facilities,

CITY OF CARLSBAD

COUNCIL POLICY STATEMENT

General Subject: REQUIREMENTS NECESSARY TO
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Copies to: City Council, City Manager, City Attorney, Department and Division Heads,
Employee Bulletin Boards, Press, File

maintenance yards, libraries and general offices, which will insure they will be available concurrent with need.

POLICY:

1. In determining whether or not service provided by another entity will be available concurrent with needs in connection with a project, the Council, in the absence of evidence to the contrary, shall be guided by a letter of availability from that entity, provided, however, developments which are required to dedicate land or pay fees for school facilities pursuant to Chapter 21.55 of the Carlsbad Municipal Code, shall be deemed to have satisfied the Public Facilities Element in regard to schools for that development without the necessity for an availability letter.
2. The City Council finds that the report entitled, "A Public Facilities Fee for the City of Carlsbad", dated July 3, 1979, accurately reflected the City's need for and lack of ability to provide public facilities, and services to new development and was therefore approved by the original Policy No. 17 adopted on August 29, 1979. The City Council also finds, based on the reports submitted in support of Ordinance No. 9791, and in support of an increase to the public facilities fee as presented to the City Council on July 28, 1987, that in addition to a public facilities fee, other means of providing needed facilities and services must be established. These other means include the adoption of a development management system and various impact fees.

The Council also finds that the continued development of the City, with the consequent increase in population and in the use of public facilities, will impose increased requirements for such facilities, including, but not limited to, parks, major streets, traffic signals, storm drains, bridges and public buildings, such as fire stations, police facilities, maintenance facilities, libraries and general offices. The necessity for such facilities results directly from new construction and the need cannot be met from ordinary City revenues. The most practical and equitable method of paying for such facilities is to impose a fee upon a new development in the City. Payment of such a fee will enable the City to fund a construction program to provide public facilities. If a project developer agrees to pay the public facilities fee established by this

CITY OF CARLSBAD

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policy and other impact fees as may be adopted by City Council ordinance or resolution, and complies with any applicable facilities plan, the City Council will be able to find that public facilities and services will be available concurrent with need and that the requirements of the public facilities have been met. In addition, the Council finds that the creation of Community Facilities District No. 1 has provided an alternative source of funding for three projects previously funded entirely from the public facilities fee. These projects are the construction of the new main Library and remodel of the existing Library facility, construction of new City administration facilities, and the construction of a portion of the park improvements within the Macario Canyon area. Those properties within the boundaries of and subject to taxation by CFD No. 1 have therefore met a portion of their public facilities obligation and should receive a credit against the public facilities fees due at the time of development.

3. Before any zoning, subdivision, development or redevelopment approval or permit may be given, the applicant shall pay or agree to pay (on the forms attached hereto) a public facilities fee in the amount of 3.5% of the building permit valuation of the buildings or structures, or a fee of \$1,150 for each mobilehome space to be constructed pursuant to such approval. If the property applying for the above actions is within the boundaries of the Community Facilities District No. 1 and is subject to taxation by the District, the amount of the public facilities fee due shall be 1.82% of building permit valuation as defined above or a fee of \$598 for each mobile home space to be constructed pursuant to such approval shall be required. The fee shall be paid prior to issuance of building or other permits, and shall be based on the valuation at that time.
4. All proceeds from the fee collected pursuant to this policy shall be paid into a special capital outlay fund of the City entitled, "Public Facilities Fund." The fund shall be used only for the purpose of acquiring, building, improving, expanding and equipping public property, and public improvements and facilities including, but not limited to, the following types of capital projects: Public buildings (such as fire stations, police facilities, maintenance and yard facilities, libraries and general city offices) parks, major streets, traffic signals, storm drains, bridges and other similar projects as the Council may deem

CITY OF CARLSBAD
COUNCIL POLICY STATEMENT

General Subject: REQUIREMENTS NECESSARY TO
SATISFY THE PUBLIC FACILITIES
ELEMENT OF THE GENERAL PLAN

Specific Subject:

Policy No. 17
Date Issued 7/2/91
Effective Date 7/2/91
Cancellation Date _____
Supersedes No. 17 Issued 7/28/87

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necessary and appropriate. Designation of expenditures of funds available from the fund shall be made by the City Council in the context of approval of the City's annual operating and capital improvements budget or at such other time as the Council may direct.

5. The following exceptions from payment of the fee shall apply:
- (a) The construction of a building or structure or mobilehome space which is a replacement for a building or space being removed from the same lot or parcel of land. The exception shall equal but not exceed the fee which would be payable hereunder if the building being replaced were being newly constructed. If the fee imposed on the new building exceeds the amount of this exception, such excess shall be paid.
 - (b) Accessory building or structures in mobilehome parks, such as a club house, swimming pool, or laundry facilities.
 - (c) Buildings or structures which are clearly accessory to an existing use such as fences, pools, patios and automobile garages.
 - (d) Additions to existing single-family or two-family residential structures, provided the addition does not create a new dwelling unit or economy dwelling unit as defined by the Uniform Building Code.
 - (e) The City Council may grant an exception for a low cost housing project where the City Council finds such project consistent with the Housing Element of the General Plan and that such exception is necessary. In approving an exception for low cost housing, the City Council may attach conditions, including limitations on rent or income levels of tenants. If the City Council finds a project is not being operated as a low cost housing project in accordance with all applicable conditions, the fee, which would otherwise be imposed by this chapter, shall immediately become due and payable.
 - (f) The City may not waive or otherwise adjust the amount of the tax due or imposed by Community Facilities District No. 1 under this policy.

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6. There is excluded from the fee imposed by this policy:
 - (a) Any person when imposition of such fee upon that person would be in violation of the Constitution and laws of the United States or the State of California.
 - (b) The construction of any building by a nonprofit corporation exclusively for religious, educational, hospital or charitable purposes.
 - (c) The construction of any building by the City of Carlsbad, the United States or any department or agency thereof or by the State of California or any department, agency or political subdivision thereof.
7. The City Manager shall be responsible for the administration and enforcement of this policy. His decisions may be appealed to the City Council whose decision shall be final.
8. On August 29, 1979, the City Council adopted Policy No. 17. In so doing, the Council found that public facilities were adequate for existing structures but not for any new development. Policy No. 17 shall apply to projects involving the conversion of an existing building or mobilehome park to a condominium, planned unit development, stock cooperative or other similar form of ownership as follows:

If the building or park being converted was constructed before August 29, 1979, the fee to be paid shall be limited to 3.5% of the building permit valuation of any new construction done as a part of the conversion. If the building or park being converted was constructed after August 29, 1979, a fee of 3.5% of building permit valuation at the time of construction shall be paid plus a fee of 3.5% of the building permit valuation of any new construction done as a part of the conversion. These fees are subject to adjustment as described in Section 3 above for property within the boundaries and subject to taxation by CFD No. 1.

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9. Pursuant to City of Carlsbad Ordinance No. 6082, the public facility fee shall apply to all project for which building permits were or will be issued after July 28, 1987.

EXHIBIT D

**Carlsbad, California, Code of Ordinances >> Title 5 - BUSINESS LICENSES AND REGULATIONS* >>
Chapter 5.09 - ADDITIONAL LICENSE TAX ON NEW CONSTRUCTION >>**

Chapter 5.09 - ADDITIONAL LICENSE TAX ON NEW CONSTRUCTION Sections:

- 5.09.010 - Purpose and intent.
- 5.09.020 - Definitions.
- 5.09.030 - Imposition of tax—Amount.
- 5.09.040 - Credit.
- 5.09.050 - Time and place of payment.
- 5.09.060 - Refunds.
- 5.09.070 - Disposition of proceeds.
- 5.09.080 - Exceptions.
- 5.09.090 - Exemptions.
- 5.09.100 - Construction prohibited.
- 5.09.110 - Tax liability; enforcement.
- 5.09.120 - Effective date.
- 5.09.130 - Effective date of increased tax.

5.09.010- Purpose and intent.

The city council declares that the license taxes required to be paid hereby are assessed pursuant to Section 37101 of the Government Code of the state of California and the taxing power of the city and solely for the purpose of producing revenue. This chapter is not adopted for regulatory purposes. The continued development of the city, with the consequent increase in population and in the use of public facilities, has imposed increased requirements for such facilities, including but not limited to parks, major streets, traffic signals, storm drains, bridges and public buildings (such as fire stations, police facilities, maintenance facilities, libraries and general offices). The necessity for such facilities results from new construction. The need for such facilities cannot be met from existing city revenues. The most practical and equitable method of raising city revenue is to impose a tax upon new construction in the city.

(Ord. 6067 § 1 (part), 1982)

5.09.020- Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (1) "Mobile home space" means each space, area or building, in a trailer park or mobile home park or other place, designed or intended as a place to accommodate any mobile home, trailer, van, bus or other vehicle or mobile structure, at a time when the same is being used as living or sleeping quarters for human beings.
- (2) "Person" includes every individual, firm, partnership, joint venture, association, trust, corporation or any other group engaging in construction activities itself or through the services of any employee, agent or independent contractor.

(Ord. 6067 § 1 (part), 1982)

5.09.030- Imposition of tax—Amount.

- (a) In addition to any other fee, license or tax required by this code, every person constructing or causing to be constructed or erected any building or structure in the city for which a building permit is required, shall pay a license tax in the amount of 3.5 percent of the valuation of the building or structure established pursuant to this code for determining the building permit fee.
- (b) The developer of a mobile home park shall pay a license tax fee of one thousand one hundred fifty dollars for each mobile home space. The license tax for mobile home spaces shall be automatically increased or decreased on January 1st of each year by the same percentage as the percentage of increase or decrease in construction costs between December 1st of each of the two immediately

preceding years, for which purpose construction costs and the increase or decrease therein shall be based on the Engineering News—Record Construction Cost Index.

The fee adjustment for the July 1, 2009—June 30, 2010 fiscal year shall be held in abeyance for a period of one year. Thereafter the fee shall return to the amount it would have been had there been no suspension unless prior to that time the city council adopts an ordinance specifying a different fee or formula.

- (c) For the alteration of or addition to residential structures or mobile home parks, the license tax shall be computed only on the valuation of additional dwelling units or mobile home spaces, if any, resulting from the alteration or addition.
- (d) For additions to structures, other than residential structures, the tax shall be calculated on the value of the addition only.
- (e) For the alteration of structures, other than residential structures, the tax shall be calculated on the value added by the alteration. The tax shall be imposed upon alterations only where the alteration changes the use potential for the structure, results in the ability to accommodate a more intense operation of the existing use, or results in making the structure suitable for occupancy or use pursuant to the building code.

(Ord. 6082 § 1 (part), 1987; Ord. 6078 § 1, 1986; Ord. 6072 § 1, 1983; Ord. 6067 § 1 (part), 1982)

(Ord. No. CS-041, § 5, 7-14-2009; Ord. No. CS-094, § 5, 7-13-2010)

5.09.040- Credit.

A credit toward the license tax imposed by this chapter shall be given if:

- (1) A public facilities fee has been paid pursuant to council policy number seventeen in satisfaction of an obligation under a public facilities fee agreement for the building or structure. The amount of the credit shall be the amount of the fee paid. For purposes of this section, the payment of a public facilities fee shall be deemed to include any applicable credits against such fee from community facilities district number one;
- (2) The property is subject to taxation under the communities facilities district number one amount of the credit shall be determined by the city council and established by resolution.

(Ord. NS-156 § 1, 1991; Ord. 6067 § 1 (part), 1982)

5.09.050- Time and place of payment.

The license taxes imposed pursuant to Section 5.09.030 shall be due and payable at the Office of the Community Development Director, City Hall, Carlsbad, California, upon issuance of the building permit. The tax for a mobile home space shall be paid prior to the issuance of the first permit for the construction of such space or if such construction is performed without a permit, at the time when construction is commenced.

No permit shall be issued until the tax is paid.

(Ord. NS-676 § 3 (part), 2003; Ord. 6067 § 1 (part), 1982)

5.09.060- Refunds.

If a permit for construction work expires or if such permit is revoked and if within thirty days following the expiration or revocation date of the permit the permittee files written application for a refund in the office of the city clerk, there shall be a refund of the entire tax paid. There shall be no refund if any construction work has been performed nor shall there be any partial refund. In the event of a refund, it is unlawful for any person to proceed in any way with further construction without first applying for another building permit and paying the tax imposed by this chapter. If no refund is made and a permit expires after work has been performed, a new building permit shall be required and the tax imposed by this chapter shall be paid; provided, however, a credit shall be given not to exceed the tax paid in connection with the expired permit.

(Ord. 6067 § 1 (part), 1982)

5.09.070- Disposition of proceeds.

Funds from this tax shall be placed in the general fund and shall be available for general governmental purposes. Decisions on the expenditure of such funds shall be made by the city council in the context of approval of the city's annual operating and capital improvements budget or at such other time as the council may direct.

(Ord. 6067 § 1 (part), 1982)

5.09.080- Exceptions.

There is excepted from the tax imposed by this chapter, the following:

- (1) The construction of a building or structure or mobile home space which is a replacement for a building or space being removed from the same lot or parcel of land. The exception shall equal but not exceed the tax which would be payable hereunder if the building being replaced were being newly constructed. If the tax imposed on the new building exceeds the amount of this exception, such excess shall be paid;
- (2) Accessory buildings or structures in mobile home parks, such as a club house, swimming pool, or laundry facilities;
- (3) Buildings or structures which are clearly accessory to an existing use such as fences, pools, patios and automobile garages;
- (4) Additions to existing single-family or two-family residential structures, provided the addition does not create a new dwelling unit or economy dwelling unit as defined by the Uniform Building Code;
- (5) The city council may grant an exception for a low cost housing project where the city council finds such project consistent with the housing element of the general plan and that such exception is necessary. In approving an exception for low cost housing, the city council may attach conditions, including limitations on rent or income levels of tenants. If the city council finds a project is not being operated as a low cost housing project in accordance with all applicable conditions, the tax, which would otherwise be imposed by this chapter, shall immediately become due and payable.

(Ord. 6067 § 1 (part), 1982)

5.09.090- Exemptions.

There is excluded from the tax imposed by this chapter:

- (a) Any person when imposition of such tax upon that person would be in violation of the Constitution and laws of the United States or the state of California;
- (b) The construction of any building by a nonprofit corporation exclusively for religious, educational, hospital or charitable purposes;
- (c) The construction of any building by the city of Carlsbad, the United States or any department or agency thereof or by the state of California or any department, agency or political subdivision thereof.

(Ord. 6067 § 1 (part), 1982)

5.09.100- Construction prohibited.

It is unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, make, put together or convert any building or structure in the city, or attempt to do so, or cause the same to be done, without first paying the tax imposed by this chapter.

(Ord. 6067 § 1 (part), 1982)

5.09.110- Tax liability; enforcement.

The taxes imposed by this chapter are due from the person by or on behalf of whom a residential, industrial or commercial building or mobile home space is constructed, whether such person is the owner or a lessee of the land upon which the construction is to occur. The community development director shall collect the tax due hereunder. The full amount due under this chapter shall constitute a debt to the city. An action for the collection thereof may be commenced in the name of the city in any court having jurisdiction of the cause.

The city manager shall be responsible for the administration and enforcement of this chapter. His decisions may be appealed to the city council whose decision shall be final.

(Ord. NS-676 § 3 (part), 2003; Ord. 6067 § 1 (part), 1982)

5.09.120- Effective date.

The taxes imposed by this chapter shall be applicable with respect to building permits for construction activities, issued on or after November 3, 1987, provided any person constructing one or more dwelling units, or otherwise engaging in construction taxable hereunder, pursuant to a building permit applied for before July 28, 1987, but not actually issued until on or after the date, shall not be liable for payment of the tax provided such person has obtained all other discretionary approvals required for the project, has had the application

accepted as complete, paid the plan check fee, and who obtains the permit applied for within one hundred eighty days of the date the application was accepted and diligently pursues the project to completion.

(Ord. 6082 § 1 (part), 1987; Ord. 6067 § 1 (part), 1982)

5.09.130- Effective date of increased tax.

The increased tax adopted by Ordinance No. 6078 shall apply to all projects for which building permits were issued after January 21, 1986. In those instances where building permits were issued after January 21, 1986, and before the effective date of this ordinance, the increased tax shall be due and owing upon the effective date of this ordinance. This section is adopted to implement city Ordinance No. 9791.

(Ord. 6078 § 2, 1986)